IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2888 of 2002

Solaris No.II Premises Co-operative
Society Limited .. Petitioner

versus

Municipal Corporation of Greater
Bombay & ors. .. Respondents

...

Mr.R.M. Nakhawa with Vasant Dhawan for the petitioner.

Ms.A.R. Joshi for the respondents.

CORAM : D.G. KARNIK,J.

DATED : 7th June 2005.

P.C.:

1. Heard the learned counsel for the petitioner and respondent nos.1 to 4. None present for the respondent nos.5 to 10.

2. By this petitioner, the petitioner(hereinafter referred to as 'the Society') challenges the warrant of attachment dated 25th January 2000 issued by the respondent nos.1 to 4 for attachment of the property bearing CTS No.98, 100/1, 101, and 1(1)(part)0 bearing cadestral survey no. 46(part), 57(part) of Village Tungara (hereinafter referred to as the "suit property') situate within the limits of Municipal Corporation of Greater Mumbai. The suit property consists of a building in which different units (galas) are located and are allotted to individual members. The individual members possess the galas and use the galas for their individual use permissible under law. While most of the members of the petitioner Society pay the taxes in respect of the units/galas occupied by them. Some of the members are persistent defaulters and have not paid taxes in respect of units/galas in their possession. In view of the default in payment of the taxes made by some of the members, respondent nos.1 to 4 sought to attach the entire property by issuance of an attachment warrant dated 25th January 2000, copy of which is annexed at Exhibit-B to the petition. While issuing Rule and restraining the respondent nos.1 to

4 from taking action in pursuance of the notice of demand and warrant of attachment at Exhibit I and B to the petition respectively, the Court permitted the respondent nos.1 to 4 to recover the dues from respondent nos.5 to 10 who were the defaulting members.

3. Learned counsel for the respondent nos.1 to 4 states that the respondent nos.1 to 4 has taken a policy decision not to attach and auction the entire property of any Society for the recovery of the dues of taxes of some of the defaulting members and that the respondent nos.1 to 4 would recover the taxes only by attachment and sale of the units with the individual members who are defaulters in payment of the taxes, provided the society approaches the respondent from issuing of separate individual bills. Since the petitioner has already approached the respondent nos.1 to 4 for issuance of individual bills as per the policy of the respondent nos.1 to 4, the attachment of society’s entire property cannot be continued but only the units of the defaulting members can be attached and auctioned for the purpose of recovery of the taxes due from them.

4. In view of this, warrant of attachment Exhibit-B attaching the entire property of the society is quashed with liberty to the respondent nos.1 to 4 to issue fresh warrant of attachment in respect of units/galas of the defaulting members of the society.

5. Rule made absolute to the extent mentioned above.

D.G. KARNIK, J